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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,078	05/13/2005	Jean-Robert Tremblay	00004/315358	1920
7590 LOUIS TESSIER P.O. BOX 54029 TMR, QC H3P 3H4 CANADA				
			EXAMINER HERRING, BRENT W	
			ART UNIT 3633	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/535,078

**Applicant(s)**

TREMBLAY, JEAN-ROBERT

**Examiner**

BRENT W. HERRING

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-16 and 20-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 05/13/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- Species I. Figure 7, drawn to a flagstone insert with a liner and plank.
- Species II. Figure 8a, drawn to a flagstone insert with a plank.
- Species III. Figure 8b, drawn to a flagstone insert with a plank.
- Species IV. Figure 8c, drawn to a flagstone insert with a plank.
- Species V. Figure 8d, drawn to a flagstone insert with a plank.
- Species VI. Figure 8e, drawn to a flagstone insert with a plank.
- Species VII. Figure 12, drawn to a flagstone insert with a plank.
- Species VIII. Figure 13, drawn to a flagstone insert with a plank and a shim.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

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all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. The claims are deemed to correspond to the species listed above in the following manner:

They dictate the correspondence between the flagstone and the planks.

The following claim(s) appear to be generic: 1, 14, and 27.

3. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the shape of the planks and flagstones are distinct and the inclusion or exclusion of a shim or liner is distinct.

4. During a telephone conversation with Louis Tessier on April 1, 2008 a provisional election was made without traverse to prosecute the invention of Figure 8c, claims 1-3, 7-16, and 20-27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-6 and 17-19 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

#### ***Information Disclosure Statement***

5. The information disclosure statement (IDS) submitted on May 13, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 7-12, 14-16, 20-25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Bates, U.S. Patent 350,101.

Regarding claim 1:

'101 discloses a modular deck structure comprising: an open (M, pg. 1, Ins, 34-36) frame with interconnected crisscross framing members (B, C) defining a plurality of polygonal cells, each of said cells comprising: a top, a bottom and an inner wall delimiting an opening, the inner wall comprising a sloping portion (see Figs. 1-3); and a plurality of flagstones (H) with side edges, each of said flagstones being sized and shaped to adjustably fit within a respective one of said cell (see Figs. 1, 2), the sloping portion inherently draining water out of the open frame to prevent water accumulation between the side edges of the flagstones and the inner walls.

Regarding claim 2:

'101 discloses claim 1, further comprising conforming means (the sloping side edges of the flagstones, see Fig. 4) for conforming said side edges of the flagstone to the sloping portion of the respective cell, thereby allowing each of said flagstones to sit properly on said sloping portion of the cell.

Regarding claim 3:

'101 discloses claim 2, wherein the conforming means comprise the side edges of the flagstones, having a sloping shape complementary to the sloping portion of the inner wall of the cells (see Fig. 1).

Regarding claim 7:

'101 discloses claim 1, wherein said framing members (B, C) of the frame comprise: border planks (perimeter planks shown in Fig. 6) together defining a polygonal perimeter; and at least one transverse plank (interior planks, C) extending across said polygonal perimeter.

Regarding claim 8:

'101 discloses claim 7, wherein said framing members of the frame further comprise: cross planks (C) extending at right angle (see Fig. 2) with said at least one transverse plank (perpendicularly positioned planks, C), between one of said border planks (perimeter planks) and one of said transverse planks or between two of said transverse planks.

Regarding claim 9:

'101 discloses claim 8, wherein each of the transverse planks (C) and each of the cross planks (perpendicularly positioned planks, C) have a similar trapezoidal transversal cross section with: parallel top and bottom edges, the top edge being shorter in length than the bottom edge; and slanted side edges (B), thereby providing said sloping portion of the inner wall of two of said cells that are adjacent to each other (see Fig. 3).

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Regarding claim 10:

'101 discloses claim 9, wherein each of the border planks has a trapezoidal transversal cross section (see Fig. 3) with: parallel top and bottom edges, the top edge being shorter in length than the bottom edge; an outer edge (B, see Fig. 6) at right angle with the bottom and top edges; and a slanted inner edge, thereby providing said sloping portion of the inner wall of at least one of said cells.

Regarding claim 11:

'101 discloses claim 10, wherein the transverse planks and the cross planks have a trapezoidal longitudinal cross section with: parallel top and bottom edges, the top edge being longer in length than the bottom edge (see Fig. 3); and slanted side edges complementary to the slanted side edges of the transversal cross section of any one of the transverse planks, the cross planks and the border planks.

Regarding claim 12:

'101 discloses claim 1, further comprising support means (foundation, F) for supporting said frame in a raised position with respect to a ground surface (not shown).

Regarding claim 14:

'101 discloses a kit for assembling a modular deck structure, comprising: framing members (C) being connectable to one another in order to form an open frame having a plurality of polygonal cells (see Fig. 2), each of said cells

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comprising: a top, a bottom and an inner wall delimiting an opening, the inner wall comprising a sloping portion (B, see Figs. 1, 2); and a plurality of flagstones (H, see Fig. 4) with side edges, each of said flagstones being sized and shaped to adjustably fit within a respective one of said cells, the sloping portion (inherently) draining water out of the open frame to prevent water accumulation between the side edge of the flagstones and the inner walls.

Regarding claim 15:

'101 discloses claim 14, further comprising conforming means (sloping edges of the flagstones) useable for conforming said side edges of the flagstone to the sloping portion of the respective cell, thereby allowing each of said flagstones to sit properly on said sloping portion of the cell.

Regarding claim 16:

'101 discloses claim 15, wherein the conforming means comprise the side edges of the flagstones, having a sloping shape complementary to the sloping portion of the inner wall of the cells (see Fig. 1).

Regarding claim 20:

'101 discloses claim 14, wherein said framing members comprise: border planks (perimeter planks shown in Fig. 6) being connectable to one another in order to define a polygonal perimeter; and at least one transverse plank (C) being connectable to the border planks so that the transverse plank extends across said polygonal perimeter.

Regarding claim 21:



'101 discloses claim 20, wherein said framing members further comprise cross planks (perpendicular planks, also denoted by C) being connectable to one of said border planks and one of said transverse planks or between two of said transverse planks so that the cross planks extend at right angle with said at least one transverse plank (see Fig. 2).

Regarding claim 22:

'101 discloses claim 21, wherein each of the transverse planks and each of the cross planks have a similar trapezoidal transversal cross section (see Figs. 1, 3) with: parallel top and bottom edges, the top edge being shorter in length than the bottom edge; and slanted side edges (B), thereby providing said sloping portion of the inner wall of two of said cells that are adjacent to each other.

Regarding claim 23:

'101 discloses claim 22, wherein each of the border planks has a trapezoidal transversal cross section (see Fig. 3) with: parallel top and bottom edges, the top edge being shorter in length than the bottom edge; an outer edge at right angle with the bottom and top edges (B, see Fig. 6); and a slanted inner edge, thereby providing said sloping portion of the inner wall of at least one of said cells.

Regarding claim 24:

'101 discloses claim 23, wherein the transverse planks and the cross planks have a trapezoidal longitudinal cross section (see Fig. 3) with: parallel top and bottom edges, the top edge being longer in length than the bottom edge;

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and slanted side edges complementary to the slanted side edges of the transversal cross section of any one of the transverse planks, the cross planks and the border planks.

Regarding claim 25:

'101 discloses 14, further comprising support means (foundation, F) for supporting said frame in a raised position with respect to a ground surface (not shown).

Regarding claim 27:

'101 discloses a modular deck structure comprising: an open (M) frame with interconnected crisscross framing members (C) defining a plurality of polygonal cells, each of said cells comprising: a top, a bottom and an inner wall delimiting an opening (see Fig. 2), the inner wall comprising a sloping portion (see Figs. 1, 3); a plurality of flagstones with side edges (H, see Fig. 4), each of said flagstones being sized and shaped to adjustably fit within a respective one of said cells (see Fig. 1); and conforming means (B, sloped edges) for conforming said side edges of the flagstone to the sloping portion of the respective cell, thereby allowing each of said flagstones to sit properly on said sloping portion of the cell, the sloping portion (inherently) draining water out of the open frame to prevent water accumulation between the side edges of the flagstones and the inner walls.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 13 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates ('101) as applied to claims 12 and 25, respectively, above, and further in view of Sabatini, U.S.P.A. 2003/0097808.

Regarding claims 13 and 26:

'101 discloses claims 13 and 26 respectively, but '101 does not expressly disclose wherein the support means comprises adjustable vertical support posts.

'808 discloses a deck structure and a kit therefore (see Fig. 3) wherein the support means comprises adjustable vertical support posts (10).

'101 and '808 are analogous art because they are from the same field of deck structure with panels set in framing.

At the time of the invention of, it would have been obvious to a person of ordinary skill in the art to use the adjustable vertical support posts of '808 to further elevate the structure of '101.

The motivation to combine would have been to allow further space below the decking for the inclusion of utility lines and duct work (pg. 2, Ins. 120-133 of '101).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT W. HERRING whose telephone number is (571)270-3661. The examiner can normally be reached on Monday-Thursday, 8:00AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian E. Glessner can be reached on (571)272-6847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BWH/

bwh

/Robert J Canfield/

Supervisory Patent Examiner, Art Unit 3635

